

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ELIZABETH E. NESBITT; ALAN C. BAKER,

Plaintiffs-Appellees,

v.

U.S. ARMY CORPS OF ENGINEERS; JOHN McHUGH, Secretary of the Army;
THOMAS BOSTICK, Lieutenant General, Commanding General and Chief of
Engineers; JOHN S. KEM, Colonel, Northwestern Division Commander;
ANDREW D. KELLY, Lieutenant Colonel, Walla Walla District Commander and
District Engineer,

Defendants-Appellants.

On Appeal from the U.S. District Court for the District of Idaho,
Civil Action No. 3:13-cv-00336-BLW
The Honorable B. Lynn Winmill, U.S. District Court Judge

**PLAINTIFFS-APPELLEES' UNOPPOSED MOTION FOR A FURTHER
EXTENSION OF TIME TO FILE THEIR ANSWERING BRIEF AND
SUPPLEMENTAL EXCERPTS OF RECORD**

COME NOW, Plaintiffs-Appellees, Elizabeth E. Nesbitt (née Morris) and
Alan C. Baker, by and through their undersigned attorney, and respectfully move,
pursuant to FRAP 26(b), FRAP 27, and Ninth Circuit Rule 31-2.2, for a 21-day
extension of time to file their answering brief and supplemental excerpts of record.

Counsel for Defendants-Appellants has advised the undersigned that Defendants-Appellants consent to the granting of this Motion.

The current deadline for Plaintiffs-Appellees' answering brief and supplemental excerpts of record is June 17, 2015, and the deadline would be extended to July 8, 2015, if this Motion were granted. This is Plaintiffs-Appellees' second request to extend the time to file their answering brief and supplemental excerpts of record. The original deadline was May 18, 2015. On April 28, 2015, Plaintiffs-Appellees' 30-day streamlined request was approved extending the deadline to June 17, 2015. The grounds for this Motion are set forth in the attached declaration of Steven J. Lechner, counsel for Plaintiffs-Appellees.

WHEREFORE, Plaintiffs-Appellees respectfully request that they be granted a 21-day extension, to and including July 8, 2015, in which to file their answer brief and supplemental excerpts of record.

DATED this 1st day of June 2015.

Respectfully submitted,

s/ Steven J. Lechner
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Attorney for Plaintiffs-Appellees

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**DECLARATION OF STEVEN J. LECHNER IN SUPPORT OF
PLAINTIFFS-APPELLEES' UNOPPOSED MOTION FOR A FURTHER
EXTENSION OF TIME TO FILE THEIR ANSWERING BRIEF AND
SUPPLEMENTAL EXCERPTS OF RECORD**

I, Steven J. Lechner, declare, pursuant to 28 U.S.C. § 1746 and under
penalty of perjury, that the following is true and correct:

1. I represent Plaintiffs-Appellees, Elizabeth E. Nesbitt (née Morris) and
Alan C. Baker in this appeal. I am also Vice President and Chief Legal Officer for

Mountain States Legal Foundation (“MSLF”), a non-profit, public interest legal foundation located in the State of Colorado. As Chief Legal Officer, I am responsible for overseeing all of MSLF’s litigation.

2. On April 17, 2015, Defendants-Appellants filed their Opening Brief and Excerpts of Record. Based upon that filing, Plaintiffs-Appellees’ answering brief and supplemental excerpts of record were due May 18, 2015. On April 28, 2015, this Court approved Plaintiffs-Appellees’ 30-day streamlined request, extending the deadline to June 17, 2015.

3. During April and May, I worked diligently on Plaintiffs-Appellees’ answering brief, as time permitted. I have had a long involvement in this case and because of my familiarity with the facts and legal issues, I cannot simply assign another attorney in my office the task of preparing Plaintiffs-Appellees’ answering brief and supplemental excerpts of record. However, my responsibilities to clients in other cases and my corporate responsibilities prevent me from adequately preparing and filing Plaintiffs-Appellees’ answering brief and supplemental excerpts of record by the current deadline of June 17, 2015, thereby necessitating a further extension. Including my day-to-day management responsibilities, these responsibilities have included, *inter alia*:

- During the week of April 22, 2015, I prepared for and represented a client at a meeting held under the National Historical Preservation Act in Great Falls, Montana.
- During the week of May 4, 2015, I reviewed, edited, and approved for filing an amicus curiae brief for *Mountain West Holding Co., Inc. v. State of Montana, et al.*, 9th Cir. Nos. 14-36097 and 15-35003, which was filed on May 8, 2015.
- During the week of May 4, 2015, I also researched and reviewed, edited, and finalized an amicus curiae brief for *State of Texas, et al. v. United States of America, et al.*, 5th Cir. No 15-40238, which I filed on May 11, 2015.
- During the week of May 18, 2015, I researched and reviewed, edited, and finalized an amicus curiae brief for *People for Ethical Treatment v. U.S. Fish & Wildlife, et al.*, Tenth Circuit No. 14-4151, which I filed on May 26, 2015.

Over the next three weeks, my responsibilities will include, *inter alia*:

- On June 3–5, 2015, my attendance is required at MSLF’s regularly scheduled Board of Directors meeting to advise the Board on MSLF’s litigation program, etc. Preparation for this meeting has consumed a substantial amount of my time during the past two weeks.

- On June 10, 2015, I will be presenting oral argument on the pending cross-motions for summary judgment in *Solenex v. Jewell*, Case. No. 1:13-cv-00993-RJL (D. D.C.). Preparation for this argument will take several days. I will also have to spend two days traveling to and from Washington, D.C. I cannot with good conscience ask to move this oral argument date because my client is seeking to compel agency action unreasonably delayed under 5 U.S.C. § 706(1), and my client requested oral argument, which was granted on May 21, 2015.
- On June 17, 2015, my client's reply brief is due in *State of Wyoming v. EPA*, Tenth Circuit Nos. 14-9512 and 14-9514. Preparation of the reply brief will take significant effort, considering: (1) the numerous briefs filed by the original parties, intervenors, and amici curiae; (2) the Staff Attorney who was assisting me is on maternity leave; and (3) the Staff Attorney who is presently assisting me will be unavailable beginning June 12, 2015, due to her upcoming wedding.

4. In sum, my past and future responsibilities prevent me from adequately preparing and filing Plaintiffs-Appellees' answering brief and supplemental excerpts of record by the current deadline of June 17, 2015.

Accordingly, I respectfully request a 21-day further extension, to and including July 8, 2015.

5. I consulted with counsel for Defendants-Appellants regarding the requested extension and she advised that Defendants-Appellants consent to the granting of the extension.

DATED this 1st day of June 2015.

Respectfully submitted,

s/ Steven J. Lechner
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Attorney for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on this 1st day of June 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated this 1st day of June 2015.

s/ Steven J. Lechner
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Attorney for Plaintiffs-Appellants